

REPORT to the KITTERY TOWN COUNCIL

RESPONSIBLE INDIVIDUALS: Beers

Date: June 15, 2011

Subject: Frisbee Wharf Replacement Funding

Background:

- KPA Report to Council – Workshop June 13, 2011 (not encl)
 - Frisbee Wharf remaining life 3-5 Years
 - BIG Grant award to replace with recreational boating pier
 - \$242,766 award - \$80,000 CIP dedicated reserve FY10 &11 - \$10,000 grant match from Town requested
- KPA SHIP Grant to renovate Fisherman's Pier unsuccessful
 - KPA FY12 CIP request for \$200,000 and \$75,000 four succeeding years
 - Not funded in approved FY12 CIP
- KPA Fisherman's Committee report (Philbrick) that the BIG replacement of the wharf would irreparably harm the local fishing industry
 - Expressed ideal solution would be to have approval for the BIG shift to take place in 013-14; relief of the 20-year SHIP obligation; and soonest replacement of the Wharf
- KPA proposal to shift the recreational boating project to the smaller Fisherman's Pier and replace/realign Frisbee's Wharf as the working setup
 - Requires approval of USFG granter with preliminary indications being favorable
 - Funding obligation and release expected in FY13-14
 - Requires acceptance by Federal agency or relief of 20-year obligation for Fisherman's pier (originally grant)
 - Requires funding for Frisbee at approximately \$250,000 (Plan and engineer estimate to be provided by KPA)
- Council favored the project shift contingent on:
 - Federal and State approval of the shift and resolution of the 20-year Ship obligation in writing
 - Application to Maine Department of Marine Resources (Contractor – Coastal Enterprises Incorporated) for Working Waterfront Access Pilot Program funding for the Wharf replacement (encl 1)
 - Requires a covenant be provide by the property owner (encl 2)
 - Frisbee deeds require Town to retain "wholly for public usage"
 - Kittery Title 16 zoning for Kittery Point Village and the overlay zone do not allow commercial development consistent with State covenant requirements
 - Application selection criteria (encl 3) makes it appear that KPA's proposal would not score well, but forcing the decision must be seen as prudent in order to exhaust any possible outside funding sources

Current Situation:

- Through a State Planning Grant, the plans for the new Frisbee Wharf will be "Shovel Ready" for bid by summer's end in 2011.

REPORT to the KITTELY TOWN COUNCIL

- The following examines funding alternatives for replacing Frisbee Wharf (using the preliminary estimate of \$250,000):
 - Option 1 – Add \$250,000 to FY12 Capital Program Dedicated reserve – Mil rate impact 18 cents per \$1,000 valuation.
 - Option 2 – Town Charter Section 6.07, “All capital projects which the council, by ordinance, proposes to finance through the issuance of bonds must be submitted to the qualified voters of the town”. November election Warrant Article for voter approval of a multi-year bond (adds to budget/taxes – debt service).
 - Option 3 – Town Charter Section 14.03(3) “That part of the capital program which is proposed for the ensuing fiscal year.” November election Warrant Article for voter approval of full funding in FY12 (adds to budget/taxes – separate line item).
 - Option 4 – Require KPA to conduct a capital fund raising campaign from private sources and/or its user fee structure to fully fund prior to construction, or to fund a short-term (3-5 year) commercial loan.
 - Option 5 – Make a self-loan for the entire amount to KPA from dedicated reserve funds with either KPA repayment from user fees; or from annual CIP budgets.
 - Option 6 – Fund with a combination of available funding sources, with repayment, such as follows:
 - \$50,000 - FY11 unused grant matching funds, if available
 - \$50,000 - FY11 unencumbered surplus (Charter Section 14.03(4)) if available
 - \$50,000 from CIP Capital Holding Reserve Pier maintenance reserve \$80,000
 - Intended for BIG grant match and would have to be replaced by FY13-14
 - (A) \$100,000 – Add to FY12 Capital Program – 7 cents mil rate; or,
 - (B) \$100,000 – Self-Loan
 - to be repaid from user fees; annual CIP; TIF District 2 revenue, as available
 - Option 7 – (Town Manager preferred) Fund Project with a 5 year Municipal Lease-Purchase loan.
 - Re-payment of the loan to come from the dedicated CIP Capital Holding Reserve Pier Maintenance Account (present balance of \$80,000 retained for BIG Grant match).
 - Fund the first payment in FY12 with FY11 (current year) Grant Match Account year-end transfer of \$60,000 and then in FY’13,14,15,16, dedicate sufficient Harbor operation fee revenues to the Reserve Account to pay for the loan.
- Note, this would short the Municipal Revenue side by the amount of the Mooring Fee dedication in those years, but allows the users of the system to pay directly for it without tax dollars. No Municipal election vote would be required per Town Charter section 14.03 (4) as it is funded through a dedicated account.

REPORT to the KITTELY TOWN COUNCIL

- As the KPA is a separate quasi-governmental entity, an interagency memorandum of understanding should be executed with the Town, making clear that appropriate user fees for fuel, pumpout, waste disposal , or other provided services, in addition to their current customary fees must be established and that annual revenue in excess of approved expense is to be dedicated to capital program reimbursement; and ,that any capital campaign or other outside funding (e.g. WWAPP, TIF) received must be used for the project before local funds.

Recommendation: Council discussion and consideration

If consensus achieved for approval of an option:

"The Kittery Town Council moves to approve a replacement project for the Frisbee Wharf in an amount not to exceed (*insert best estimate amount*) to be funded as presented in Option # (*identify*), contingent upon agreement between the Town and Port Authority of addressing the fund reimbursement provisions presented."

Maine's Department of Marine Resources Working Waterfront Access Pilot Program

C/O Coastal Enterprises, Inc, 2 Portland Fish Pier, Suite 206
Portland, Maine 04101, 207-772-5356

- **HOME PAGE**
- **PROGRAM OVERVIEW**
- **PROCESS & TIMELINE**
- **SCORING CRITERIA**
- **RESOURCES**
- **PRESS RELEASES**
- **REQUEST INFORMATION**
- **AWARDED PROJECTS**

Program Overview

*Permanent working waterfront access protection through the purchase of
development rights*

The Maine Department of Marine Resources (DMR), working with the Land for Maine's Future (LMF) program, provides funds to help purchase development rights in order to preserve and protect key properties on the coast that provide access to and support commercial fisheries activities. The DMR has contracted a Working Waterfront Team at Coastal Enterprises Inc (CEI) to administer and implement the Working Waterfront Access Pilot Program (WWAPP). The Team works closely with fishermen, businesses, communities and other interested parties to identify the projects that best fit the WWAPP's goals and requirements. The Team also guides the planning and application process to help assure that applicants submit a complete and appropriate proposal. Once a project has been allocated funding by the Land for Maine's Future Board, the Team continues to assist each project to completion.

When a project receives funding, the working waterfront property's development rights are extinguished through the sale of a working waterfront covenant, a legally binding deed restriction held by the Department of Marine Resources. The covenant protects all current and

future fisheries related uses of the land by prohibiting all conflicting non-fisheries activities (i.e. condos, marinas, restaurants). The covenant does allow a degree of mixed uses that are compatible with the primary fisheries use and provides the property owner with the flexibility to manage the property as needed to remain financially viable. The property owner also retains all other rights of ownership; that is, they are free to sell or lease. If and when the property owner chooses to sell the property, the State has a "right of first refusal" to assure that the land will be valued at its working waterfront value and thus remain affordable to those who would purchase it with the intent to continue commercial fishing activities.

There are certain criteria that DMR is looking for in potential projects. Every application is judged by a quantitative assessment of how it fairs within the context of five criteria. A highly scored project is one that is:

1. An active working waterfront which is strategically significant to the local, regional and state fisheries related economies;
2. Currently located and developed to fully support commercial fishing activities; providing key supports such as all tide access, fuel, bait, sales, and/or adequate parking;
3. Under current and emerging threat of conversion to uses incompatible with commercial fishing activities by development and changing population dynamics;
4. In a community with a clear desire to maintain and support their commercial fishing enterprises as evidenced by zoning, comprehensive plans, or written support and;
5. A critical part of the local fishing infrastructure providing key access for the area.

Additionally, DMR is seeking individuals, businesses, coops, or communities that are:

1. Willing to develop a business/operating plan.
2. Willing to enter a permanent deed restriction to be held and monitored by the DMR assuring the prohibition of all competing non-fishing uses of the property.

For further information or to submit an application, please contact:

Hugh Cowperthwaite, WWAPP Supervisor, for York, Cumberland, and Sagadahoc Counties. Coastal Enterprises Inc., 2 Portland Fish Pier, Suite 206, Portland, ME 04101, tel. 207-772-5356 ext. 120, hsc@ceimaine.org.

WORKING WATERFRONT COVENANT AND RIGHT OF FIRST REFUSAL

"In a nutshell"

INTRODUCTION & PURPOSE:

Working Waterfront Access Pilot Program grant funds are used to purchase certain development rights on a given piece of working waterfront property. A legal document called a working waterfront covenant granted by the land owner and held by the state will describe these restrictions. The purpose of this covenant is to ensure the permanent availability and affordability of the property for use by Commercial Fisheries Activities.

TOOL:

As described in law, a "working waterfront covenant" means an agreement in recordable form between the owner of working waterfront real estate and one or more qualified holders (in this case to be held by the Department of Marine Resources) to assure the continued and permanent access and availability and affordability of the working waterfront real estate for commercial fisheries uses (33 MRS.A c. 6-A)

METHOD:

Each covenant will be developed specifically to address the individual property to be protected considering the on-site improvements and the uses related to Commercial Fishing Activities. The covenant will permanently protect and preserve the property to ensure its availability and affordability for commercial fisheries operations. This is accomplished by limiting the property's use, alteration, or development in any manner that precludes its use for Commercial Fisheries Activities. The covenant "runs with the land" meaning that it is permanent and remains in place as a restriction on the use and value of the property regardless of future ownership.

PROPERTY OWNER RIGHTS:

The Grantor (property owner) retains all customary rights and privileges of property ownership. This includes the rights to control who can access the property (public and others) and the right to maintain and diversify the property within the limits of the covenant.

HOLDER'S RIGHTS:

The Holder (State) has the right to prevent, and require the correction of, any violations of the terms of this covenant. Holder also has the right to enter the Protected Property for the purpose of monitoring the terms of this covenant and inspecting for violations, so long as the Holder does not unreasonably interfere with Grantor's use of the property.

REPORTING:

Each year, Grantor will complete a form provided by the Holder, detailing any maintenance, alterations, repairs, and improvements to the Protected Property, as well as proposed activities for the subsequent year. Grantor and Holder will also meet annually, to discuss the past year and any future plans.

RIGHT OF FIRST REFUSAL:

The Holder will have a right of first refusal in the event the Grantor wants to sell or transfer the property. This allows the State to direct the sale of the property to fisherman who will continue to make use of and benefit from the commercial fishing capacity of the property. The price will be based in the value of the property as a working waterfront.

Grantor is the owner of the property.

Holder is the State of Maine, who will hold the covenant on the property and maintain a right of first refusal if the property is ever to be sold.

Maine's Department of Marine Resources

Working Waterfront Access Pilot Program

C/O Coastal Enterprises, Inc, 2 Portland Fish Pier, Suite 206
Portland, Maine 04101, 207-772-5356

Appendix B

Scoring Criteria

1. (30 pts) Economic Significance of the Property

Explanation: This criterion considers the economic importance of the property to the commercial fisheries industry in the immediate vicinity and as part of the State economy. Factors such as the numbers and types of fishermen using the property, the value of landings, the amount of use the property receives over time, and the essential role of the property to providing commercial fishing access in the vicinity and to the industry as a whole. Significance is gained by serving many and diverse fisheries, providing essential access in the area (the last or one of the remaining few working piers in the area), the role the facility plays in the local economy such as purchasing goods and services and providing employment, and its importance to the fisheries being served and contributions to the state economy as a whole.

(21 - 30 pts) The property is highly significant because of the numbers and diversity of fishermen and vessels using (or likely to be using) the facility, the relatively high proportion of landings in the area and for particular fisheries, it is the single or one of a few remaining working piers in the area, is a major part of the local economy, and contributes to the state economy.

(11 - 20 pts) The property is moderately significant because of the numbers and diversity of fishermen and vessels using the facility, the relatively moderate proportion of landings in the area and for particular fisheries, is an important part of the local economy, and contributes to the state economy.

(0 - 10 pts) The property has limited significance because of the relatively low numbers and diversity of fishermen and vessels using the property, the limited amount of landings for the area and fisheries, a small part of the local economy, and makes small contributions to the state economy as a whole.

2. (20 pts) Alternative Properties in the Vicinity

Explanation: This criterion considers how the project fits into the existing commercial fishing situation and if other working waterfront properties exist in the same vicinity that are also supporting commercial fisheries uses. How does this project help meet the need for commercial fishing access in the area? For example, will the proposed project provide critical capacity, complement and augment existing working access and contribute to a pattern or critical mass of waterfront facilities and services? How will the project secure critical capacity needs and not compete with other established facilities and businesses? Why is this project crucial/how does it help support or fill access needs? Is there a better alternative project? Are any alternative properties available or considered? Are any of the similar properties in the vicinity publicly owned or otherwise secured? Vicinity in this case

means the area surrounding the proposed project property, which may be described as a harbor or port, a stretch of waterfront in a area, or the existence of any reasonable alternative sites and facilities that could serve the effected fisheries businesses.

(14 - 20 pts) The property is highly needed because it provides secure critical commercial fishing access in the area and for a particular fisheries that can not or will not be met by other properties, that augments and compliments existing working access, that is integral to the working waterfront, is needed to assure adequate fishing access.

(7 - 13 pts) The property is moderately needed because it secures commercial fishing access, contributes to the capacity for working access in the area, is part of a pattern of working waterfront that is meeting access needs.

(0 - 6 pts) Need for the property is limited because it provides a small or limited amount of secure commercial fishing access that can be or is provided by other existing sites and facilities such as a municipal fish pier or commercial business.

3. (10 pts) Degree of Community Support

Explanation: This criterion considers the degree of community support for the proposed project that is demonstrated by letters of support, financial contributions, and supporting business and/or town actions will increase the significance of a project. Community support comes in a range of ways such as the existence of a comprehensive plan that recognizes the importance of the fishing industry to the community, the adoption of land use ordinances designed to protect working waterfront areas, property tax incentives to help fishing business retain ownership and use of lands and facilities, business partnerships, financial contributions, and community support in the form of letters and endorsements of the project.

(7 - 10 pts) The proposed project has high community support as evidenced by numerous measures, which could include (1) letters of support from local fishermen and fishing organizations, surrounding property owners and waterfront users, chambers of commerce and businesses benefiting from operation of the property, municipal officials, and community members addressing the impacts or merits of the project; (2) demonstrated financial and other contributions from project partners and other supporters; and (3) municipal support such as an adopted comprehensive plan that is consistent with the State's Growth Management Act with one or more measures related to protection of working waterfronts implemented as recommended in the plan, and/or land use ordinances, tax policies and other actions designed to support commercial fishing activities in the project area.

(4 - 6 pts) The proposed project has moderate community support as evidenced by some measures of support, which could include (1) letters of support and endorsements of the project; (2) limited financial and other project support; and (3) municipal support such as an adopted comprehensive plan that is consistent with the State's Growth Management Act that recognizes the importance of maintaining commercial fishing access, with some supporting actions in the project area.

(0 - 3 pts) The proposed project has minimal community support, with little demonstration of support from fishermen, businesses, municipal officials, or community members; minimal supporting municipal actions, and little outside financial support.

4. (20 pts) Level of Threat of Conversion

Explanation: The threat of conversion to uses incompatible with commercial fisheries businesses can be reflected in the patterns and trends of waterfront development within the area. Population trends, escalating property values, the loss of similar fishing properties to other uses, and an active real estate market are measures of threat. Property that can be

converted and/or redeveloped under existing land use regulations is an indication of high threat level. Properties used with informal access arrangements may also be highly threatened by unforeseen changes in ownership.

(14–20pts) The property is highly threatened by current/emerging conversion to other uses as evidenced by development pressures in the community and surrounding areas. There is a demonstrated market for the property to be converted to non-fisheries uses.

(7-13 pts) The property is moderately threatened by current/emerging conversion to other uses as evidenced by development pressures in the community and surrounding areas. The property may have some development potential.

(0-6pts) The property is slightly threatened by current/emerging conversion to other uses as evidenced by development pressures in the community and surrounding areas. The property is restricted in use to commercial fishing or water dependent uses, or the properties best economic return is through use for commercial fishing business.

5. (20 pts) Utility of the Property for Commercial Fisheries Business

Explanation: The utility of the proposed protected property for commercial fisheries business uses in terms of its natural characteristics and developed infrastructure is an important factor in evaluating the significance of a project. Properties in good repair or put into good repair, with convenient access room to operate from land and water, and well maintained will demonstrate high utility.

(14 – 20 pts) The property has high utility for the uses proposed because of its existing and planned improvements, its setting in proximity to boat channels and land transportation system, critical and supporting services in the area, and operational space.

(7 – 13 pts) The property has medium utility for the uses proposed because of its existing and planned improvements, its setting in proximity to boat channels and land transportation system, critical and supporting services in the area, and operational space.

(0 – 6 pts) The property has limited utility for the uses proposed because of its existing and planned improvements, its setting in proximity to boat channels and land transportation system, critical and supporting services in the area, and operational space.